



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was over-issued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 13, 2013, Milwaukee Enrollment Services (the agency) sent Petitioner a Notification of FS Overissuance, Claim Number [REDACTED], indicating that he was overissued

- [REDACTED]
- FoodShare benefits in the amount of \$3172.00 for the period of July 1, 2013 to October 31, 2013. (Exhibit 3, pgs. 79-82)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 16, 2014. (Exhibit 1)
 4. Petitioner completed a six month report form on April 5, 2013. (Exhibit 3, pg. 13)
 5. Petitioner's wife began working at [REDACTED] on April 8, 2013. (Exhibit 3, pg. 36)
 6. On April 16, 2013, the agency sent Petitioner a notice indicating that he would be receiving FoodShare benefits based upon a monthly income of \$565 per month. (Exhibit 3, pgs. 52-57)
 7. Petitioner lost his job at [REDACTED] on May 13, 2013. Petitioner reported this to the agency on May 21, 2013 and the agency received verification of the same on May 28, 2013. (Exhibit 3, pg. 12)
 8. On May 29, 2013, the agency sent Petitioner a notice indicating that he would be receiving \$793 per month in FoodShare benefits, based upon a determination that he had no household income. (Exhibit 2, pgs. 58-63)
 9. Petitioner began receiving Unemployment Insurance Benefits on June 19, 2013. He received a lump sum for back benefits on June 19, 2013 and then received a regular weekly UIB payment on June 25, 2013. (Exhibit 3, pgs. 33-34)
 10. On September 18, 2013, Petitioner completed an on-line renewal and indicated that his wife was working at [REDACTED], working 32 hours per week at \$12.50 an hour; that his employment at [REDACTED] ended on May 13, 2013 and that he had been receiving Unemployment Insurance Benefits (UIB) since June 20, 2013, in the amount of \$359.00. (Exhibit 3, pgs. 16-20; See also pgs. 33-34 for UIB benefits)
 11. On September 27, 2013, the agency sent Petitioner a notice indicating that his FoodShare benefits would be ending because his household was over the program limits. (Exhibit 3, pgs. 64-68)
 12. Petitioner's assistance group consists of 5 people, and there are no elderly, blind or disabled members in the home. (Exhibit 3, pgs. 17-19)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient overcome the county agency's evidence of correct action.

PETITIONER'S CHANGE REPORTING REQUIREMENTS

Because there is no evidence to indicate that Petitioner's household included an elderly, blind or disabled (EBD) member, the FoodShare Wisconsin Handbook (FSH) only required the Petitioner to report changes that caused his household income to exceed 130% of the Federal Poverty Limit (FPL):

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

[REDACTED]

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

"...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline." 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

In the case at hand, the agency asserts that an overpayment of benefits occurred because Petitioner did not report his wife's income from [REDACTED] and because he did not report his receipt of UIB income. Consequently, Petitioner received FoodShare benefits was based upon the belief that his household had no income.

Petitioner did not dispute the fact that he received FoodShare benefits in the amount of \$793 per month for July through September. Nor does Petitioner dispute the fact that his wife's income and his unemployment benefits went unreported until his wife and he completed a renewal in September 2013. However, Petitioner asserts that he was not made aware of the obligation to report the new source of income.

Petitioner provided Exhibit two, a print out of change reporting information from ACCESS, dated 2/15/14, to show that even at application he was not made aware that he had to report certain increases in income. However, the first paragraph under the heading "Reporting Changes Through ACCESS" states:

Based on the benefits you are getting, you must tell your worker if your household's total gross monthly income goes over \$2987.00. by gross monthly household income, we mean all of the money that the people in your home get each month before taxes or anything else is taken out. If this happens, you must tell your worker by the 10th day of the month after it happens.

Exhibit 2

The \$2987 is the 130% FPL limit for a household of 5 for October 1, 2013 forward. *FSH §8.1.1.1* As such, the Petitioner was made aware of his change reporting instructions at the time of application, though he might have missed the instructions or not understood them fully, since they were not included in the bullet points, four paragraphs later, that listed changes that must be reported and changes that may be reported. (See Exhibit 2)

PETITIONER'S WIFE'S MAY INCOME AFFECTED BENEFITS FROM JULY 2013 FORWARD

At the time Petitioner completed his Six Month Report form on April 5, 2013, his wife was not yet working. Consequently, the Petitioner would not have had to report her income until the household income exceeded the 130% of FPL. *FSH §6.1.1.2* As of October 1, 2013, 130% of the FPL was \$2987 per month. Prior to that the 130% FPL income limit was \$2927. *FSH §8.1.1.1*

[REDACTED]

In May 2013, the Petitioner did not receive UIB. (Exhibit 3, pg. 34) Petitioner did receive three paychecks from [REDACTED] for \$925, \$982.21 and \$93.49, for a total of \$2001.15. Petitioner's wife received five paychecks in May for \$336, \$336, \$402, \$396, \$426, for a total of \$1896.00. (Exhibit 3, pg. 36)

Petitioner's total household income in May 2013 was $\$2001.15 + \$1896.00 = \$3897.15$. This was over the 130% FPL income limit of \$2927, which would have triggered the requirement under *FS*, §6.1.1.2 to report an increase in income by June 10, 2013. This change report would have affected benefits for July 2013.

As such, an overpayment did occur, beginning in July 2013, due to Petitioner's failure to report his wife's income. However, the agency did not correctly calculate the overpayment amount.

CALCULATING AN OVERPAYMENT

To determine the overpayment itself, the agency is to only count income and expenses that had to be reported. Income that was not required to be reported should not be included in the overpayment calculation:

7.3.2.1 Client and Non-client Error

Consider the *FS* group's reporting requirements when calculating the overissuance. *Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.*

...

When determining if an overissuance occurred due to an unreported increase in total gross monthly income, compare the total actual unconverted income amount to the income reporting limit for the household size to determine if the income should have been reported. **Enter the converted income amount to determine ongoing benefit eligibility.** Use the income and expenses reported or required to be reported for each month of the adjustment period. ***In claim calculations, disregard income that was not previously reported and was not required to be reported.***

FSH, §7.3.2.1. (Emphasis added)

PETITIONER'S UIB BENEFITS AFFECTED FOODSHARE BENEFITS FROM SEPTEMBER 2013 FORWARD.

Retroactive Unemployment Benefits paid in a lump sum are NOT to be counted as income and should only be counted as an asset in the month it is received. *FSH* §4.5.5 Consequently, for June 2013, the lump sum Unemployment Benefits paid to Petitioner on June 19, 2013, would not be counted as income, it would have been counted as an asset.

Counting only the UIB received for UIB week 25, on June 25, 2013, Petitioner's UIB income for June 2013 works out to be \$359.00.

Petitioner's wife received four paychecks in June 2013, for \$426, \$432, \$420 and \$462, for a total of \$1740. (Exhibit 3, pg. 37)

Thus, Petitioner's countable household income in June 2013 totaled \$2099. This was less than the 130% FPL reporting income limit of \$2927. Consequently, Petitioner was not required to report his

unemployment benefits by July 10, 2013. Thus, pursuant to *FSH*, §7.3.2.1, any overpayment for July 2013 should not include Petitioner's UIB benefits.

In July 2013, Petitioner regularly received UIB checks, and July was a five week month; so Petitioner received a total of \$1795 in UIB.

Petitioner's wife received four checks in July for \$366, \$444, \$443 and \$400. So, Petitioner's wife received a total of \$1653.

The total household income was $\$1795 + \$1653 = \$3448$. This was over the 130% FPL reporting income limit of \$2927. At this point, Petitioner was obligated to report this change in income by August 10, 2013 and this change report would have affected September benefits. See *FSH*, §§6.1.1.2 and 7.3.2.1 As such, any overpayment for August should not include Petitioner's UIB income.

However, the overpayment calculations for September and October, should include both Petitioner's UIB income and his wife's earned income, since both sources of income should have been reported by then.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was overpaid FoodShare benefits between July 1, 2013 and October 31, 2013.
2. The agency did not correctly determine the amount of the overpayment, because it included Petitioner's UIB benefits for July and August 2013, contrary to *FSH*, §7.3.2.1

THEREFORE, it is

ORDERED

That the agency recalculate the overpayment amount, excluding Petitioner's UIB benefits from income for July and August 2013. The agency shall then amend claim number [REDACTED] to reflect the corrected overpayment amount. The agency shall take all administrative steps necessary to complete these tasks within 5 days of this decision.


REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

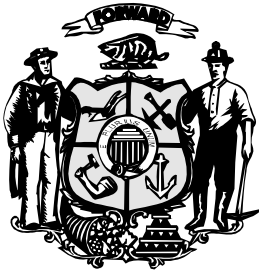
 You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of March, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 12, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability